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AMERICAN CHURCH LAW

CONSIDERED IN RELATION

TO THE LAW OF THE CHURCH OF ENGLAND

*AND THE ADMINISTRATION OF THE CIVIL LAW
IN THE UNITED STATES*

AN ESSAY

BY

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AMERICAN CHURCH LAW.

This Essay was begun at the request of Bishop HUNTINGTON to give him my opinion as to the relation of the Law of the Church in England to our Church in this country. The Bishop has never seen this Essay, is in no way committed to its teachings, and I have no knowledge of the extent to which he would approve or disapprove of the views herein presented.

§ I. *Introduction.*

When our ancestors came to this country they were subjects of the British Crown and they brought with them the English Common Law.

In like manner, and for the same reason, when our ancestors and forefathers in the Church came here, they brought with them, besides the Bible, which is the common property of all Christians, the English Prayer Book, with the English Law for the Rites and Ceremonies, as well as for the Doctrine, Discipline and Worship as by law established in the English Church, or the Church of England.

At the time of the Revolution, the British Sovereignty ceased. English statutes were no longer in force *proprio vigore*; but the Common Law was still retained.

All of the Courts in the United States accepted it in its place and proper applications. And many of the Legislative Bodies have expressly recognized it in so far as it was applicable in the altered condition of our people, who, by the Revolution, had passed from being *subjects* of the British Crown to being *citizens* of this American Republic.

The world has seen but three great codes or systems of Law. And each of them had a radical principle of its own, distinguishing it from the others. (1) The Jewish, which, as was claimed and as we believe, was given by God Himself by revelation through Moses and other inspired men after him. (2) The Roman, sometimes called, by way of distinction, the "Civil Code," which originated with certain aristocratic men for the purpose of ruling the masses of the people, and (3) the English, which is also sometimes called, by way of distinction, "the Common Law," which originated in the usages of the people.

The theory is that in any community, city, town or village where people meet, associate and "walk together," there must arise usages, ways of saying and doing things, which are in accord with the common sense and the consciences of the people who make up that community.

Now, in England, the theory is that these usages—"customary use"—are the basis and foundation of all law. And we have, growing out of it, the two following processes: (1) The recognition of these usages by some court in its judicial determinations, thus making them to be thence afterward written law, *Lex Scripta*; and (2) Parliamentary Enactments, (or "Royal edicts,") which

come in for the twofold purpose (*a*) of making provision in the advance of society for something in regard to which there is no "customary use," and (*b*) to make changes in the common law, whether written or unwritten, when the altered circumstances of the people make a change necessary.

But, of course, at the Declaration of Independence, or, at least, the acknowledgement of it by the British Government, all the laws of the first class ceased to be of force in this country. *As statutes* they had no force; but the customs and usages which had grown out of them were a part of the common law, "written" or "unwritten," as the case may have been. And, besides this, each one of the Colonies had statutes of their own enacting, as well as a body of "customs," that had come to have the force of law since their settlement in this country.

§ 2. *Rejection of English Law.*

At the date of the Revolution, 1776-1782, the English Law consisted of three parts or elements:

1. Statute enactments made by Parliament and approved by the King.
2. Principles of common usage that had been accepted by the Courts and thus made written law.
3. Common usages that had not been thus recognized, but which had been observed for at least twenty years.

These last two elements make "the common law," so called, in its two parts, "written law" and the "unwritten law."

And this common law, in so far as it has not been expressly changed by Legislative enactments, is still in

force. I presume that not a single suit of any kind could be commenced and carried on to a final issue without some of its principles and definitions. And, in fact, Blackstone and Kent's Commentaries are about as indispensable to the law student and the practitioner in our courts as the Bible and Prayer Book are for those who are preparing to minister the Word and Sacraments in our churches.

§ 3. *The Common Law of the Church.*

This current of Church law, "the common law of the Church," began in the usages of the Apostles and in the Mother Church at Jerusalem. These usages—sometimes called traditions—have been changed, enlarged and invalidated both by positive enactments—Canons—passed in councils having competent authority therefor, and by usage. But, as an undercurrent, it runs along the whole line of Church History and guides in some measure every act of ministerial effort for the extension of the Church or the edification of its members. Not a Canon can be passed, not a definition, even, be given, scarcely so much as an act can be performed that does not imply this undercurrent of Church law or Church spirit, and which is not to some extent guided by it.

But the question naturally arises: How far does this current of common law extend? What is the proper limit and boundary between it and that part of the Canon law that depends upon and was, in fact, created by positive enactment? And it is for practical purposes a very important question. It is, moreover, the question to which I am expected to give my special attention in this Essay.

The law of the English Church, in its broadest and most comprehensive sense, consists of four elements:

1. Positive statements of Holy Scriptures with regard to Church organization and administration.

2. Canons and usages of the Primitive Church which have been either *expressly* recognized or generally adopted by practice and usage.

3. The laws and enactments which have been made and provided for that purpose by competent authority and not yet repealed.

4. Customary usages. In any government and in any system of law, whether civil or ecclesiastical, there arise what are called usages which in time come to have the force of law, though resting on no positive or formal enactment. These "customary usages" come to have the force of law when they have been in use since "the time whereof the memory of man runneth not to the contrary," or "time out of mind." But in later times the English courts have decided that twenty years is the limit, so that what has been in use, general and undisputed use, for twenty or more years, is a part of the law of the land. The Ancient General Council of Chalcedon, A. D. 451, attended by six hundred and thirty Bishops, enacted (Can. xvii.) that thirty years should be the limit, so that no custom or usage, especially in reference to the administration of Dioceses in a Province or Provincial Church, which had been observed unquestioned for thirty years, should be changed without some positive enactment by a legislative body having competent legislative authority for such an act.

§ 4. *The Papal Influence.*

In this statement I make no mention or recognition of Rome, the Roman Church or the Popes, as in any

sense and to any extent a source of Church law in England as distinct from the second and fourth items above ; for notwithstanding the extent of the *Papal influence* in England and over its Church, from the coming of Augustine, at the close of the sixth century, to the Reformation—no act of the Pope and no Canon passed on the continent was recognized as *law* in England until it had been considered and re-enacted in England by some competent authority there.

In reference to the Pope and Papal influence in England we have three distinct stages :

1. From the first introduction of Christianity, A. D. 80-100, to the coming of Augustine, A. D. 596, about five hundred years, the Church in England knew nothing of the Popes or Bishops of Rome more than any other foreign Bishops, and the Popes seem for the most part to have known nothing of any Church or body of Christians in England or Great Britain.

2. From the coming of Augustine, A. D. 596, to the Norman Conquest, A. D. 1066, when the Bishops of Rome exerted a friendly and often efficient aid to the Missionaries in converting the heathen Saxons and Danes that overran the East and North of England, and establishing the Church.

3. From the Conquest, A. D. 1066, to the rejection of the Supremacy and the Reformation in A. D. 1530-2, when the Popes became aggressive and put forth their claims to headship and supreme authority, not only over the Church but over all the States and Kingdoms of the world as well.

At this last named period the Papal Supremacy and Papal influence were rejected altogether.

§ 5. *Early Canon Law.*

Referring now to the Church law in general we find that among the earliest Canons (xxxvii.) of the Apostolic Code, provision was made for a "meeting of the Bishops twice every year to examine and arrange among themselves the decrees concerning religion and settle the ecclesiastical controversies that may have arisen."

The great General Council of Nice, A. D. 325, recognizes these early Canons (Can. ii.). And also the Customs or Usages (Can. vi.) and the distinct limit or boundaries of Provinces was recognized (Can. iv.) and also decrees that *in each Province*, Synods or Conventions shall be held "twice every year" for the purposes described in the Apostolic Canon just quoted. The Council of Chalcedon, A. D. 451, the largest that was ever held, recognized (Can. xix.) this law of biennial Conventions, Councils or Synods in the Provinces and, having heard that they are not always held, enacted, "the Holy Synod has, *therefore*, according to the Canons of the Holy Fathers, the Bishops in every Province shall meet twice a year and settle whatever matters may have arisen," and made it a penal offense for any Bishop not hindered by "ill health" or "unavoidable business" not to attend these Synods.

And more than this, the Council recognizes the fact that cases and questions may arise in which the Metropolitan or Presiding Bishop of the Province may be personally concerned or for other reasons unlikely to make a just and equitable disposal of any case of discipline in which one of his Bishops was concerned, made provision for an appeal to the Patriarch (of the Diocese) or to the Bishop of *Constantinople*. No appeal

to Rome, except for those who were in the Patriarchate of Rome, which was then confined to Italy, south of the Alps and the adjoining Islands.

But each Province was thus and with this limitation totally independent of all other Provinces, Archbishops, Patriarchs or Popes, by whatever name they may have been called or may now be called.

Thus, while the unity of the Church, for all the purposes of work and administration, was the Diocese, (Parish, it was then called,) yet the Province was the unity for all purposes of legislative canon-making.

Conventions with a single Bishop, his Clergy and Laity in session, as we now have them, was then unheard of, and so far as we know they had not been thought of or proposed by any body. But the Bishops of a Province, never less than three and often as many as twenty or thirty, met, or were supposed to do so, as we have seen, twice a year, and considered themselves competent to settle all questions relating to Church Doctrine, Duty or Discipline which had arisen or might arise.

While, then, the Province was the unit for legislation, the Diocese was the unity for administration and Church work. Thus St. Ignatius says, about A. D. 95: "Let all reverence the Deacons as the servants of Jesus Christ, the Bishop as the father, the Presbyters as the Sanhedrim of God. Without these there is no Church," or rather without these "it is not called a Church." (Epistle to the Trallians iii.)

And then again in his Epistle to the Smyrneans (viii.) he says: "Let no man do anything that belongs to the Church separately from the Bishop. Let that

Eucharist be regarded as valid and duly administered which is either offered by the Bishop or by him to whom the Bishop has given his assent. It is not lawful, without the Bishop, either to baptise or to celebrate the Holy Communion. But whatever he shall approve that is pleasing unto God, and thus we may be sure that whatever is done is well done."

Now, St. Ignatius was born seven years before our Lord's crucifixion. He had been made Bishop of Antioch, which at that time was the capital of the East, as Rome was of the West,—A. D. 67, that is, about four years before the fall of Jerusalem,—and he lived there as Bishop some thirty years before the death of St. John, the last of the Apostles to depart this life, and, of course, therefore, something like thirty years before the last of our New Testament Books were written.

If, therefore, anybody had the means and opportunity of knowing and speaking intelligently—I will not say with authority—on these subjects, it was St. Ignatius.

St. Ignatius says nothing of Provinces or Provincial Synods. He, evidently, lived before the time at which they had begun to be held. Hence, for him and in his estimation, the Bishops were, each one of them in his own city and the surrounding country, the Parish, or Diocese, as we call it, the sole administrator of the Divine Laws.

This independence, however, of Bishops and Councils is recognized and declared by the Councils as soon as they began to be held, as subordinate, so far as the setting forth of any new Creed or declarations of matters of the Faith and the fundamental principles of Church organization is concerned, to the Canons and decrees

and determinations of the General Councils (Can. Eph. viii., Def. Chalcedon).

§ 6. *The United States a New Province.*

It was also provided that whenever in the course of Providence or Political Changes in the relation of Provinces to one another, or the erection of a new territory to the dignity and rights of a Province, or self government as such, "the order of the ecclesiastical Dioceses follow the political and public forms" of government. (Chalcedon xvii).

Now, these are all matters in regard to which there must be some law, or practice without rule or law. And without any law to guide us, who shall decide what is to be done, and whether what has been done in any case is rightly done or not? If the Church is to decide, we have here the Church's law. But if each one is to decide for himself, there is no standard,—no law,—and where there is no law there is no transgression—and no righteousness, either—all is lawless.

Hence, we claim, and it is admitted as an undisputed fact, that when these States became free and had the requisite number of Bishops—three, at least—the Church here became a separate and independent Provincial Church, with the right and power to make Canons and Provinces and Forms of Worship of her own.

Now, by this step, as I hold, all the laws of the English Church which rested upon legislative enactment became inoperative and of no force, just as the Statute laws enacted by Parliament became inactive and of no force here *as Statutes*, and valid and of force only as they were included in the common practices and usages of the community, and *because* they were so included.

Hence, *in the Church*, whatever rite or usage may have for its origin such enactments was of force and part of the law in *this* Church because, and only because, it was in use here as a customary usage, by our Clergy and the People.

Of course, and for obvious reasons, I make no reference here to the Church laws of any other Church or religious denomination in this country, besides that which is known here as the Protestant Episcopal Church.

§ 7. *The Attitude Assumed.*

When our forefathers effected the complete organization of their Branch of the Church of Christ in this country, they declared, in words with which we are all familiar, "that this Church is far from intending to depart from the Church of England in any essential point of Doctrine, Discipline or Worship; or further than local circumstances require."

Here it will be noticed that there is no express mention made of the positive enactments, or Canon Law of the Church of England. It speaks only by express mention of the "essential points" of the three great departments, Doctrine, Discipline and Worship. And in these departments, only of the points that are essential.

But the declaration adds, as a more comprehensive expression of their intention,—which in this case is to be regarded as the law for us,—that they do not intend to depart in regard to any matter, whether of Doctrine, Discipline or Worship, whether of "essential" value and importance or not, any farther than local circumstances require.

And, doubtless, the "essential points" were all contained in the common law, including the Bible and an-

cient Creeds and Canons. Nothing that rests upon any positive enactment of the English Church, whether Parliament, Convocation or Council, can be "*essential*" to either Doctrine, Discipline or even Worship of the Church.

§ 8. *The Attitude of the General Convention.*

Again, in the General Convention of 1807, we have an event that is worthy of special notice in this connection.

On Tuesday, May 19th, the Deputies from Maryland called the attention of the General Convention to the "expediency of adopting the English Canon *concerning marriages*." The House referred the communication to the House of Bishops, with the request that they would consider the subject, etc. On the 21st day of May, the House of Bishops replied that, "as in relation to the whole ecclesiastical system—not law, be it observed—they consider the Table as now obligatory on this Church, and as what will remain so; unless there should hereafter appear cause to alter it without departing from the Word of God or endangering the peace and good order of this Church."

It is manifest in this case that neither the Deputies from Maryland, nor yet the House of Deputies, were of the opinion that the whole Body of English Church Law was in force in this country. Their act was based on the doubt whether any part of it was so. Nor did the Bishops in their reply either affirm or imply that all the Canons of the Church of England and the English Canon Law, as a body, were in force in this country and binding on Churchmen here.

Nor, as it seems to me, can the terms they used be fairly understood to imply that all those Canons and

Parliamentary enactments were regarded by them as in force here, even so far as they were not made necessarily inapplicable, or required by the change in "local" (and political) "circumstances"—as stated in the Preface to the Prayer Book. Manifestly the Deputies from Maryland did not so understand the matter. The House of Deputies expressed no dissent from the view that was implied in and formed, in fact, the basis and only conceivable ground of this application. And the House of Bishops did not, in their reply, assert anything to the contrary; although, as it would seem, here was an occasion and a special call for such an assertion, if that had been the view that they entertained on the subject. The words they used, "the ecclesiastical system," cannot be understood as including all or, in fact, any of the minor details and un-"essential points."

But more than this. It is a principle in the interpretation of law, that the mention of one is the exclusion of all the rest, which seems applicable in this case. When, therefore, the House of Bishops expressed their opinion that "the Table" of prohibited Degrees was in force, by mentioning this one part as still in force, in their estimation, they must be understood as, if not excluding all other parts, yet as assuming the attitude of non-committal in regard to them.

The subject matter of this application and reply was one with regard to which there must be some law or rule, or, at least, a practice without law or rule of any kind for the guidance of the clergy and lay members of the Church. Occasions for the marriage of persons who come within the provisions of this law were constantly occurring and calling for decision and action one way

or another. Hence the Bishops decided that so much of the English Law as related to the subject should be in force until altered by competent authority.

There might be, and in some respects there ought to be, an important distinction made between Canons that were passed by a Church acting in her corporate capacity and acts of Parliament and Royal Proclamations relating to the affairs of the Church. But I do not care now to make use of that distinction. I include all Acts and Canons which were regarded as in force in England and in the Church of England, when the complete organization of a Provincial Branch of the Church Catholic was effected in this country. I include them all in the same class and as having the same claim to be considered as a part of our Church law in this country. And my first point is that, (1) neither the Prayer Book in its Preface nor the General Convention in 1807 considered the English Law to be a part of the Church law in this country; but, on the contrary, in accordance with the principle of legal interpretation already alluded to, they must be understood, both of them, as expressing a contrary opinion.

§ 9. *Attitude of the Clergy.*

I pass to another (2) point and say that neither the Bishops nor the inferior clergy have, from that time to this, considered the English Church Law as in force *as law* in this country.

I emphasize the words "as law," because if those Canons and Statutes are in force as law, they are in force to be *obeyed* by the clergy and to be *enforced* by the Bishops—all of them, and not merely parts and principles of them, as individuals may prefer to accept, ob-

serve and enforce them as law. And if they are in force *as law*, then all of them, all of their details, except, of course, as they may have been either repealed by express act of legislation, or rendered inapplicable by "local circumstances," are in force and to be enforced.

But I know of no Bishop who has so regarded them, I know of no one, and I do not believe there has been one, who felt it a part of his duty, in accordance with his ordination vows or otherwise, to study the details of English Church Law with a view of observing it, or has felt himself bound to enforce them in the administration of his Diocese.

Nor do I know of any Presbyters who have felt or claimed that that law as a whole and in all its parts was for him or this Branch of the Church a rule of duty. On the contrary, so far as I know, they have appealed to this or that point or part of the law which seemed to favor and vindicate, if not, indeed, to call for some usage or matter of ritual or vestments which they were inclined to adopt.

Doubtless, whatever is law in the Church in England is valuable as an expression of principle, as Acts of Parliament are in matters of State, except as already said in so far as it has either been repealed by express acts of legislation (possibly by its having fallen into disuse) or has been rendered inconsistent with our altered political institutions—valuable and venerable as statements of principle, but not in force as law.

§ 10. *Requirements for Orders.*

If, now, we turn our attention from the individual acts and opinions of Bishops and Presbyters to the acts of our Church in its collective capacity, we find a further confirmation of the view that I have expressed on this subject.

In 1804 the House of Bishops prescribed a course of study "in pursuance of a Resolution of the preceding General Convention." In this they give a somewhat elaborate statement of the studies that ought to be pursued by those who are preparing for the Sacred Ministry, and also a pretty full statement of the Text Books to be used.

But in this whole course of statement there is no mention of the Canons of the English Church, and no text book prescribed on that subject. But there *is* a statement that "A knowlege of the Constitution and Canons [of this Church] should be held absolutely necessary." And a hope is expressed that "on this account they—the Constitution and Canons—will soon be published" in a form "detatched from the Journals."

We draw the same inference from the Canons concerning the examination of those who are to be ordained. The first Canon on this subject was the viii. of 1789. This Canon provided that no one should be ordained in this Church until he "is sufficiently acquainted with the New Testament in Greek, and can give an account of his faith in the Latin tongue."

In 1860, Canon viii., § 7, it was provided that for any person to be admitted to Priest's Orders there should be three separate examinations, at the third or last of which the candidate was to be "examined in the Constitution and Canons of the Church," among other things. But in the Canons of 1871, Tit. 1, Can. 4, § 5, the phraseology is changed so as to read "the Constitution and Canons of this Church," etc. And that is doubtless what was intended in 1860.

But in no case is there a mention of or an allusion to the Canons of the English Church as a subject of

either study or examination ; although in the later forms of the Canon there is a pretty full enumeration and specification of the topics of study and examination.

§ II. *The Ordination Vows.*

I have but one more testimony to consider, as bearing on this point. It is, in some respects, the most solemn of all. I refer to our ordination vows.

Deacons are always supposed to be under the direction of "the Bishop" or other Chief Ministers, who, according to the Canons of the Church, have charge and government over them. But at the ordination of Priests, we make two distinct promises and pledges :

(1) To Minister the Doctrine and Sacraments and the Discipline of Christ . . . as *this* Church hath received the same.

(2) To obey the Bishop and other Chief Ministers, following, with a glad mind and will, their godly admonitions.

The Canons of "*this* Church" are recognized and mentioned by name in the Ordination services of both Deacons and Priests as an authority. But the Canons and Laws of the English Church are nowhere recognized or spoken of.

The rule, then, that we promise to obey is three-fold. (1) The Bible as *this* Church hath interpreted it. (2) The Canons of *this* Church, and (3) "the godly admonitions of the Bishop," under whose jurisdiction we serve, whether as Deacons or Priests.

This last named authority, the "godly admonitions" of the Bishop, deserves a few words of special consideration.

Some there are who seem to think that "godly admonitions" are such as tend to promote godliness

And some there are—at least I have heard it so said—who regard those “admonitions” as “godly,” only, which agree with their own notions of what ought to be prescribed and laid down for their observance.

But these words have a more serious meaning than is consistent with any such interpretation or treatment. They form a part of a legal formula and, as in such cases, they must be understood and interpreted *in sensu imponentis*—in the sense that is understood and intended by the authority that imposes them.

The English Church, if I mistake not, has put an authoritative construction on the words thus used in the two forms of ordination—that to the Deaconate and that to the Priesthood.

In the view of the English Ecclesiastical Courts, “a godly admonition” given by the Bishop, or other chief minister, is one that is *not contrary* to the Canons and Laws of the Church. It may thus be, therefore, one of three things, either :

(1) An admonition to do some thing that is expressly commanded by the Law of the Church.

(2) A prohibition to prevent one from doing what is strictly forbidden by the Law of the Church.

(3) Any instruction in regard to a matter for which there is no provision in the Law of the Church, or the Law itself, is ambiguous.

This last leaves to the Bishop the decision of the doubtful questions in regard to either the Doctrines he is to teach—the Discipline he is to enforce, or the Worship he is to conduct. In this regard, if the advice, instruction or command *is not contrary to some law of the Church*, it must be regarded as a “godly ad-

monition," and obeyed as a fulfillment, so far as it goes, of one's ordination vows.

And this, if it is not *law* for us, as I think it is not, is, nevertheless, but the common sense of all mankind. All promises are to be understood *in sensu imponentis*—that is, as they are understood by the authority that imposes them.

§ 12. *The Nature of the Church Laws.*

And this leads me to speak of another point which I design to make, and which, though apparently of quite a technical character, is, nevertheless, one that is final and conclusive of the matter.

All the *laws* of the Church, while giving directions of what one ought to do, are, in reference to their administration, of the nature of criminal laws.

The laws of the land relate to life, liberty and the pursuit of happiness, and give rise to suits of two widely different kinds. One class or kind are called civil suits, brought by one citizen against another for either some tort or breach of contract, and in order to recover damages for the damage that has been sustained. And the other class or kind are called criminal suits. They are brought by the State for some misdemeanor or crime and for the punishment of any party that may be found guilty by due process of law. In the first class of cases, "damages" are the result, and in the other, the punishment of the offender.

But no mere Church law in this country can extend to either "life, liberty or property," or to what is the means of "the pursuit of happiness" that the laws of our State have in view and protect by their enactments.

Hence in Church law there are and can be no suits

like the civil suits in our State laws. Every suit on trial is of the nature of a criminal suit, brought against some one who is charged with an offense, and the worst that can result is some admontion, suspension from the Ministry or from the communion of the Church ; Excommunication, degradation from the Ministry, or both degradation and excommunication.

Now, our Canons have defined the offenses for which a clergyman may be tried and punished. Canon title II, Can. 2. They are : (1) crime or immorality ; (2) heresy or teaching contrary to the doctrines held by the Protestant Episcopal Church in the United States of America ; (3) violation of the Constitution and Canons of the General Convention ; (4) violation of the Constitution and Canons of the Diocese to which he belongs ; (5) any act which involves a breach of his ordination vows,

Here it will be noticed that there is no mention or recognition of the Canons or laws of the English Church or any other branch of the Church of Christ except our own. And in the absence of such recognition there is, on the recognized principles of interpretation of law, of necessity an exclusion of them.

Even Can. 21, title I, which provides for the suppression of certain forms of ritual for which there is no provision or recognition in *our* Prayer Book and Canons, there is no recognition or allusion to the English Church Law, Catholic usage or anything else besides the laws of our Church, Rules and Canons, that may be pleaded by the clergyman who is charged with or suspected of these ceremonies or practices as a defense against the complaints of irregularities that shall have been properly charged against him.

There are and can be in this case none of what are sometimes called and which formerly existed in the civil code—"crimes at common law." In fact there are no such crimes recognized now in our Church government, nor in most, if any, of our States. Whenever a crime is alleged and a criminal suit is commenced, there must be some statute, or clause of a statute, specified in the indictment, or no proceedings can be had. And under the Canon of our General Convention, just cited, the case must be the same. There are and can be no offenses for which one may be tried that are not included under or described by one or another of the five specifications thus made.

And then we have the fundamental principle of all law: "Where there is a right, there is a remedy," or where there is a law, there is the means of enforcing it. And, conversely, where there is no means of enforcing a rule or principle or a custom, it is not a law.

Now, in case of civil suits for tort or breach of contract, custom is always and of necessity recognized, and the remedy is damages—such damages as the court and jury find the plaintiff in the suit to have sustained by the wrong doing, or neglect to do, on the part of the defendant.

But in criminal suits, "the remedy," or "means of enforcing the law," is the punishment inflicted on the party that is proved to have been guilty of the offense charged against him. When, therefore, there is no law describing the offense, or, even, if there is a description of the offense and no penalty prescribed in the statutes, there is technically no law. Principle, rule, usage, good reasons, there may be. But there is no law for the case, and there can be no "case" under the law.

§ 13. *When there is No Law there Can be No Crime.*

There is another very important difference between the law and its administration in the civil and in the criminal suits that may be brought into our courts. No civil suit can be dismissed for want of a law which is applicable to the case. If the law is not found (*a*) in the statutes, or in the (*b*) accepted decisions of the courts, or (*c*) in acknowledged customs, it must be found in and developed from "the breast of the Judges," *ex gremio magistratuum*. But, in the case of criminal suits, it is quite otherwise. Suits are dropped or dismissed for want of a law applicable to the offense alleged against the party complained of.

The common sense and conscience of all modern civilized nations are now set very strongly against all forms of what are called *ex post facto* laws. They insist that no man shall be punished or liable to punishment for any act which was not forbidden by some law that was passed, and that he might have known to be a law, before the act was committed. It is not sufficient merely that the act be morally wrong, contrary to the charity and good will and public spirit, which all men ought to have and exercise, but it must have been forbidden by some law or statute of which the accused may avail himself as a protection and a defense at the time of his trial.

We have seen that our Canon recognizes "any act which involves a breach of one's ordination vows," as an offense for which any clergyman may be tried and punished. We have also seen that "following" the godly admonitions of the Bishop is one of the promises or "vows" that we make at our ordination. And, finally,

we have (3) that any advice or direction given by one's Bishop is to be regarded as a "godly admonition" which is (a) either in the direction or furtherance of any existing law of the Church, or (b) giving a definition and specific direction to any law that is ambiguous in its terms, or needs a more specific construction with a view to some practice or application in the work and duties of the Ministry, or, (c) finally, giving some direction and specific instruction for cases coming within the range of ministerial duty that is not foreseen and provided for by any existing law, if, indeed, there are any such.

And here, in this last named class of cases, the principles and rules of the English Church Law *are for the Bishop* a most important guide; always bearing in mind the point already more than once distinctly recognized and spoken of, namely, the difference in the political relations between the English Church and our own—they are under State control, (protection, they call it,) we are not.

§ 14. *Difference in Aims of Church and State Law.*

There is another very important difference between the civil laws of our land and the Canon laws of the Church, which deserve far more extensive consideration than I can give it in this place.

It will be remembered that the civil laws relate to "*life, liberty and property*," whereas the Canon laws relate only to one's *religious privileges*, the man, every one of us, is *born* into the State, lives in it and cannot escape from the jurisdiction of its laws, except by going into another State and where he must live under its laws and be subject to that other State.

But in the Church, each one is supposed to join it be-

cause he chooses to do so and intends to obey its laws, Canons, rules and other regulations for a godly life and for his own spiritual good.

Hence, in the State, no law that has been recognized and become a "written law" can lose its force as a *law by mere disuse*. "Actions," of course, become outlawed, but the law remains in force as a law, applicable and to be applied to any case where the cause of action has not been suffered by the party who had the right to bring the action, has neglected to do so by his fault until the time prescribed by the law itself—the "statute of limitation"—has expired. Within these limits the law must be applied on the demand of the injured party to have the case considered.

Now, in the Church, there is, indeed, no "statute of limitations;" but, then, the recognized principle that disuse, continued disuse, does do away with the law and makes that which was once enacted, but is now no longer observed and enforced, to be, in its effects and proper relations to the conduct of the members of the Church, virtually and really no law.

And yet, undoubtedly, the moral and religious sentiments of a community and the just judgment of mankind—and, as we cannot doubt the judgment of God also—do make an important difference between any attempt to revise, for the sake of reformation, any rite or usage that has been allowed in times of laxity, irreligion and absence of discipline, and the attempt to revive a usage that has been allowed to fall into disuse because it was no longer "good for the use of edifying," and, in the common sense of mankind, had better be left to the fate that has overtaken it.

§ 15. *Importance of the Difference.*

The difference here alluded to is of a fundamental importance. The Church is a Divine Institution and has elements that no man may disannul or put aside. And, besides those that are expressly stated in Holy Scripture, there are, doubtless, others derived from Primitive and Catholic Canons or usages that are of such a nature that they ought not to be omitted and cannot be neglected or allowed to fall into disuse by any one who is sufficiently instructed to be properly entrusted with the duties and responsibilities of the Sacred Ministry, without a knowledge on his part that he is departing from that standard and neglecting a duty, which is, or possibly may be, of a very grave importance, far beyond his estimate as involving the sins of heresy or schism, or, possibly, something that is worse in the Divine estimation.

But in the case of a mere usage that rests upon no express enactment or law, and has fallen into disuse or been superseded by some other usage, the mere fact of the change is an expression of the public sentiment on the subject and, as I think, it is sufficient.

I think that this difference between civil and ecclesiastical laws, already pointed out, is, *in a country like our own*, worthy of a few words more of special note and emphasis. *Civil* laws, and all "cases" under them, deal, as I have said, with life, liberty or property as a means of the pursuit of happiness. *Ecclesiastical* laws, strictly and wholly in this country, deal with one's spiritual privileges alone. Such laws are not, *in this country*, any part of the laws that affect the interests with which the State has to deal, and in regard to which

a man must know his rights and his duties and his liabilities, as well, for the successful and safe prosecution of his daily affairs.

In civil matters, when a case comes into court relating to property as a civil suit, there must be a law found and the amount of property that is in controversy must be adjudicated and go to one party or the other.

But in an ecclesiastical suit there are only two questions—one of which chiefly concerns laymen—whether he may be allowed to go on in the enjoyment of what he regards as religious privileges, or not ; and the *other*, which pertains more especially to the clergy, which is, whether one may go on performing the work of his Ministry in a certain way and in the use of certain rites and usages, or not.

Now, the decision in either of the two classes cannot possibly be of essential importance to the salvation of the souls of the party concerned. And it will often happen, as we frequently see, that it would be better for all concerned that the party interested should not have his way. But, if he is right, he will suffer less spiritually than the party that either silences or expels him for what he has felt called upon to say or do.

I am speaking, of course, only of those who have rightful authority over us, whether in Church or in State. The duty to resist within certain limits unlawful or usurped authority over us, whether in Church or in State, is not only inculcated in the Holy Scriptures, but it is sanctioned and commended to us by all the honor the world shows to the names of the martyrs by whose blood we have gained whatever we enjoy.

§ 16. *No Civil Suits in Ecclesiastical Courts.*

Now, as we have seen, in the administration of cases in the ecclesiastical law, there can be none of what we call, in the administration of the laws of the State, civil suits, but only those that are known as criminal cases. And here, the very essence of a criminal suit, is some wrong done, which implies *malice* on the part of the agent. It is supposed to be an act that is wrong in itself, *malum per se*, and such as no man can perform, *whatever may be his knowledge or his ignorance* of what is *technically* the law, without the consciousness of some wrong motive, or, at least, a motive which he *ought* to know, *can* know and *will* know, if he takes proper pains to find out, is evil and leads to wrong doing—to which as a righteous and right minded man he ought not to do or wish to do, whether there is a law forbidding it or not.

But, in the case of Church laws that have been allowed to fall into disuse, there is no possibility of this element of guilt which, as I have said, is the chief element in all the acts which the laws of the State forbid as crimes or misdemeanors. Hence, as I claim, continued disuse virtually repeals any law that relates to mere non-essential details and takes from it all of its binding force.

I am well aware that it has been decided in England that a law—that is, a Church law—once duly passed and yet unrepealed is in full force as a law. But, then, we must remember that, in England, whatever laws may have been passed by the Church in her convocations, or passed by Parliament, must receive the royal approbation and signature before they can have the force of law at all. And thus it becomes a part of the law of the *State*,

as well as a law of the Church, and passes under the general rule of the primary and abiding force of all State or civil laws of which we have been speaking. It is true, indeed, that "causes of action" may come under the "Statute of limitations," and thus parties may be debarred from bringing actions or precluded from the application of the law, for State reasons. But the law remains, nevertheless, and may be enforced wherever the proper rules of procedure are observed.

But, for the reason suggested, in this country, where there is no connection of Church and State, no law passed by the Church has any force in the Courts of the State, except upon the paramount right of the State to protect all men in their rights "to life, liberty and property."

But in the Church, the neglect of, or disuse of, what was once observed or in force as a law, but is no longer practiced or enforced by authority and resting on no special enactment, there is and can be none of what in the criminal laws of the land constitutes the essence of the crime and all of its guilt,—namely, bad motives,—whether they are of "malicious intention" or "criminal negligence."

Hence, a usage that has gone out of use and has been in that condition, either wholly or to a considerable extent, without protest or effort to enforce it by the proper authority, and has been so for the prescribed period, "twenty years," by English law, or thirty, as by the General Council of Chalcedon, is no longer a usage and has no force of law.

And, for the reason just given, the same must be true, as I think, in the Church in regard to all Statutes

or Canons that relate to the mere non-essential details of ritual and worship.

§ 17. *Bearing on a Court of Appeals.*

The difference between the status of what is Church law in England and any laws or Canons that we can pass in this country have a very important bearing on a subject that is now exciting a good deal of interest in the minds of many of the members of our Church. I refer to what is called an Appellate Court or some means of appealing from the Diocesan determinations to a higher court for correction of errors.

In this country a clergyman may be proceeded against, as we have seen above, for one of five classes of offenses, and there is no appeal thus far provided for as a remedy against possible mistakes or personal feelings that may have influenced the trial in the first instance.

All these causes of action may, for our present purposes, be reduced to two classes, (1) crimes and immorality and (2) including heresy, the disobedience to the Canons and laws of the Church, and violation of one's ordination vows.

Now, in the first class of cases, no reversal of the judgment below, if it were adverse to the party accused, could reinstate him in the confidence and affections of the people at large; and without it he could not possibly return to his Parish or go to any other in our land and continue to perform the duties of his office and draw the salary that had been pledged to him as a means of support.

But in England it is quite the reverse. His "living" is, there, a part of the rights which the State undertakes to protect, or, in legal phrase, it is "a vested right."

Hence, any reversal in his favor of a decision in the court below would restore him to his "living" and he would continue to hold and "enjoy" it, however unpopular he might be, and without the slightest regard to the feelings and wishes of the people. And he might, in many cases, provide for the work of the "living" by supplying some unobjectionable curate at half or less of the income he himself receives.

In the other class of cases, a reversal of the judgment of the court below might, indeed, and probably would, subject the Bishop to a mortification, a humiliation and a shame, but it could hardly do the clergyman himself, personally, any good. In this age and country he could make more out of his conviction by posing as a martyr—a victim of persecution, and gaining the sympathy that would be at his command on that account—than he could by any amount or dignity of judicial determination in his favor by any higher court of appeals that this age or country allows us to hope or make any provision for.

§ 18. *Church Law in this Country.*

I come, then, to the conclusion that as Church law in this country we have, in the broadest sense, only (1) the Canons and laws which we, ourselves, acting as an independent Provincial or National Church, have passed, (2) the customary usages, not contrary to any of these Canons or laws that have been in use and prevailed—(in any Diocese?)—for twenty or thirty years, and (3) the godly admonitions which any Bishop may have given in his Diocese and for the guidance of the clergy that are under his jurisdiction.

But it is a matter of doubt how far the Canons of the

General Councils, the Nice, A. D. 325 ; Constantinople, A. D. 381 ; Ephesus, A. D. 431, and Chalcedon, A. D. 451, are obligatory on us ; and I shall make no effort to discuss or settle that question. I shall not even express an opinion in regard to it.

There is, however, one point more of difference between our Church and the Church of England that needs a few words of explanation.

In consequence of the relations of Church and State, in that country, they have an element or part of their law to which we have, here, nothing corresponding. I refer to the mass of Judicial Determinations which have been given from time to time as causes have been carried by appeal or otherwise to their higher courts. Such decisions have with them the force of law and are with them a part of the law of the Church, as well as of the land.

But we have nothing of the kind. For us, Church law is (1) the Holy Scriptures, (2) the Canons that have been enacted and (3) customary usages. I say Canons, because it is the Canons that with us give force and binding obligation to the Rubrics.

If, however, we had a system of ecclesiastical courts, and courts in the Church for the trial of anything but offenses against the Canons and one's ordination vows, we should have one after another of "the common usages" recognized by our courts, and made to be from that time onward a part of the written law, until we should have a law for *every* thing and liberty for nothing. And, as in the State, these "Decisions of our Courts" have grown, here, as in England, to be a large, perhaps the largest, part of the laws of our land, so it

would be in the Church. But with no Court of Appeals in our Church this is impossible. What is Canon, is Canon law. What is usage, is usage merely, and of force as law only in the place, city, locality, community or Church where it is in general use and has been in use for, at least, the prescribed period of twenty or thirty years.

And it must be usage *here* and *now* to have the force of law. Past usages or customs that have prevailed elsewhere in other parts or branches of the Church at that time may have been, indeed, law for them. But if they have gone out of use, they may serve as suggestions if we have something to do for which we have no written law or usage here.

I have spoken above of city, community or church as the locality for a usage; but I presume that in relation to our present subject it had better be a Diocese.

And yet, in a certain important sense, the Parish is, with us, a Church unit. Not only has it corporate rights as an eleemosynary corporation under the laws of the State, but the Priest who is in charge as its Rector has certain rights even as against the Bishop. He is made, as Deacons are not, the interpreter of Canons and Rubrics, or, rather, the administrator of them in his Parish and for his people, and so long as he keeps himself clearly within the letter and spirit of the law, he may hold on his course even if the Bishop should direct him to do otherwise.

Now, I think it will be no unwarrantable stretch of authority if we claim that in this country the Bishop has the right to give directions—that will, and ought to have, the force of law in regard to matters of use and

disuse—that are provided for by no Canon and are not of general use, when the matter itself can be regarded as only one of choice or taste, or preference, and a mere “accident,” so to call it, of the teaching and Worship of the Church, and for which no precise Canon or law has been provided.

§ 19. *Cases of Use and Disuse.*

I will illustrate what I have in mind by referring to a special case.

Many years ago—and yet within the memory of some of us—the black gown was in general use in all of our Parishes, as the garment or vestment worn by the Preacher when in the Pulpit and engaged in preaching and giving instruction to his people.

But gradually the black gown fell into disuse, “innoxious desuetude,” and is, so far as I know, nowhere used at present in this Diocese.

Now, in view of what I have been saying, I have no doubt that any Bishop would have had the authority and the right to insist upon the continuance of the use of that vestment, in any particular case, *while it was in general use*, and thus prevent any change in that usage.

And I have as little doubt that no Bishop has the right to insist upon or enforce a return to the use of that vestment,—now that it has generally gone out of use,—there being, as is understood, no Canon or other positive enactment in this country, either requiring or forbidding its use.

Or we may have an example in our present usages. It is the “custom,” I believe, in all our Churches and in all the Dioceses to read or to chant the Psalter responsively, the Priest or Precentor reading or singing one

verse and the people or choir responding, and so on, alternately, until the end of the Psalter, or, at least, the separate Psalms of which it is composed. But I know of no written Canon or law requiring this mode of singing or saying the Psalter or the other canticles of the Church.

At the beginning of things it always occurs to minds of a broad culture and ample resources that there are several ways of doing a thing, all of which are, at least, practicable, and, perhaps, no one of them that is intrinsically better than another. But usage and custom get us familiar with the way in which we have been accustomed to do things or to see them done, and narrow-minds (and such are comparatively the great mass of men) cannot see that any other way is possible. And in religion and religious worship, at least, these customary usages become a part of the religion and the worship, which may not be lightly disturbed and cannot be changed without involving more or less of evil consequences.

§ 20. *Present Importance of this Conclusion.*

And this conclusion, if I have, indeed, reached the right conclusion in the case, is of practical importance, now, in our times and in our Branch of the Church.

It must be carefully noted, however, that this rule applies primarily to what is not determined by Canon and does rest only upon an established usage. But for those things that rest on some positive enactments made in ages gone by, there must be a distinction made, doubtless, between what is, or was, supposed to be of essential importance and what was a mere matter of detail and may be arranged and ordered and practiced, in

fact, in one way as well as another, if only the one be as useful for edification at the time and place of its use as the other. Some alterations, adaptations and modifications become necessary, in such matters, as we pass through the ages.

I am well aware that I am thus extending the authority of Bishops and limiting that of the Priests of the Church much beyond what is the common opinion on this subject. But my object is, as you will please remember, not to show what the law *ought to be*, but, rather, to ascertain and set forth what it really is in the Church of Christ in these United States.

And we must remember that the Bishops are considered as judges to ascertain and declare what the law is, not as *law makers*. It is part of our belief that they are successors of the Apostles, and, as such, have the authority and the guidance of the Holy Ghost for the work of their office. The law, in all its fundamental principles, is supposed to have been revealed and declared in Holy Scripture and taught in the Councils of the Early Church and in the Canons of our own Church. What the Bishops have to do is to find what the law is, as thus set forth, and give that law as his "godly admonition" in its application to the cases and questions that may come before him.

But the Bishop must *find* the law and not *make* it, except in the few limited cases specified. As an officer in the Church of God, which is, in some sense, the Kingdom of God,—a Kingdom, and not a mere anarchy, or rabble, without laws,—he has no more right "*to do as he pleases*,"—follow his own fancies, eccentricities or whims, if he has any,—than any other person. He is, in this respect,

like a judge in our civil courts. He must find, not *a* law, but *the* law, for all the cases that may come before him. Even in giving his "godly admonitions," he has nothing to do but to apply these general principles of law, already referred to.

The *theory* in the State is that the law is complete as a system and contains all the *principles* that can be needed for any case that can possibly arise, so that all the judge has to do in any case is to find the law, if it has been already judicially recognized and stated, and apply it to the case before him. But if no such "precedent" can be found, he is to apply the *principles* of the law and thus make a precedent and a statement of the law, which thereby becomes law for all subsequent determinations—unless (1) overruled by the higher court or (2) changed by the law-making Power.

The same principle seems to be implied, and, I think, it must hold good in the administration of Church law by our Bishops. The judge, in the case of civil law, and the Bishop, in the case of Church law, is supposed to have been thoroughly trained in the law—to be perfectly familiar with all its principles and all the judicial determinations that may have been given to it,—so thoroughly trained in it that it has become written in his mind and engraved on his heart, and so thoroughly ingrained into his very nature that it becomes a part of his instincts, his common sense, his conscience and his taste, so that he can neither think nor speak anything that is contrary to the law. Such is our theory of the administration of law, both in the Church and in the State.

§ 21. *The Position of Our Bishops.*

It would seem, then, that the position of a Bishop is to enforce obedience to the written laws of the Church, whether Canons or Rubrics, and to revive usages which they call for, if any of them have fallen into disuse, and in this way to effect reformation in his Diocese. But, in the case of a mere usage which is not contrary to any written law, he has no right, as I conceive, to order its discontinuance after it has become well established, say for the prescribed "twenty years," and the people accustomed to it, without first obtaining canonical authority from either his Diocese or the General Convention. Nor, for the same reason, has he the right to introduce anything that is not already in use, except as before mentioned, what is required by some expressed law of the Church, without obtaining the latter's consent or authority.

But, in the case of those under authority, as Presbyters and Deacons, the case is somewhat different, though not so much so as one might be disposed to think at first sight. For, while Deacons are, avowedly and by Canon, under the immediate direction of the Bishop or "other chief Ministers," the Priests who are in charge of a Parish in our country are, in respect to the prerogatives and authority of their office, much more nearly what the Bishops were in the most ancient times. The Scriptures and the Canons and Rubrics are, *so far as they go*, without reference to their Bishop, recognized as their immediate guides.

But the attempt to punish anyone for any neglect of even a written law, which has been long neglected, would clearly and justly encounter all the objections

that have ever been urged against what are known as *ex post facto* laws, which are condemned for their injustice and liability to abuse by all modern civilized governments.

The great characteristic of governments, in modern times, whether in Church or in State, and in the Church as well as in the State, is that "the government is of law and not of men." Men are to administer the law, both in Church and in State; but the subjects of the law have the law for their protection against tyranny, ill will and caprice, whether in Church or in State, and in both departments, in Church as in State, the rule of action for all and each one is to do what is right and what he ought to do, and nobody left to do merely what he pleases or to make others do as he pleases to have them.

• § 22. *The Law of the Land Supreme.*

There is one point, or principle, in the laws of the land in this country which many of our clergy do not seem to know or to fairly consider. It is the fact that over all laws that the Church can make or enforce, the law of the land is supreme. Any layman who may have been suspended or publicly censured for anything which is not an offense against the law and Canons of the Church, has a remedy against the Clergyman, Presbyter or Bishop who has thus censured or suspended him.

Then we have seen, too, in the late case of Hinman against Bishop Hare, that a Clergyman may sustain a suit against his Bishop for doing or saying anything that interferes with his work or is destroying his character without "due process of law," that is, a trial ac-

cording to the Canons of the Church. It is, indeed, true that the Court of Appeals overruled the decision of the court below. But, then, it was a civil court, and the case does not change the principle I have just stated; the case was not thrown out of court for want of jurisdiction.

It has been proposed to make a Canon to the effect that if anybody, or, at least, a Clergyman, should appeal to the civil authorities, he should be deposed from the Ministry or excommunicated for the offense. But I do not believe that any State in the Union, or the United States, would allow any church or religious society of any kind to execute any such law. The State, in our country, claims, as thoroughly as any King of England ever did, the supremacy over all persons of whatever name or kind that live on her soil and within the limits of her territory.

There is another point of difference between trials of cases in our civil courts and those which occur in the ecclesiastical courts which it may be well to speak of, though it is, perhaps, of a theoretical rather than of any practical importance.

I have already (§ 1) spoken of the three great Codes of law that have prevailed in the world. The Canon law in the Church of Rome and, in later days, in all the Churches in the Roman Obedience, is based upon and follows out, as was natural, the principles of the Roman or the Civil Code.

But from the time of the Emperors all the new statutes of law emanated from the single will of the One Man—the Emperor—as Edicts, Decrees or Rescripts. The office of Tribune had passed away or was absorbed

into the prerogatives of the Emperor, the Senate was seldom consulted and the *Comitia* were either not held or not regarded.

So in the early Church. All new rules were made as Canons by an assembly of Bishops, sometimes with laity and other clergy of the lower orders present and taking part, and no reference whatever was made to the Bishop of Rome or any other single Bishop for approval or otherwise. But from the time of Leo, A. D. 457, the Bishops of Rome began to claim a pre-eminence over the other Bishops and over the Church as well. During the latter part of the Middle Ages the question was raised and discussed in the West, whether any Canon of the Church could have any force as law without the Pope's approval. And now it is claimed in the Churches that still adhere to the Papacy, that a Papal Bull, alone and of itself, has all the force of law, as did the Edicts and Rescripts of the Emperors of old, without any council or meeting together and agreement of so much as "two of them" in the Divine Name.

But, in England, the theory has been from the very first, or, at least, since the history of its Church became a matter of which we have any full account, that is, since the conversion of the Saxons and Danes and the union of all three of the old Provinces, A. D. 1130-50—the theory has been, I say, that nothing there had the force of law in the Church which had not been passed in Convocation, which consisted of both orders,—Presbyters and Bishops,—the Presbyters being always the most numerous, and also passed in Parliament, of which the Lower House consisted chiefly, and in theory, wholly of laymen, while, in the Upper House, there were the co-ordinate body with the Lords temporal.

And now, in our country, we have recognized the laity in all our Conventions, Diocesan and General, as a co-ordinate power in the making of all Canons and laws whatsoever.

Nor is this the chief point of contrast. In the English law the principle of trial by jury was early introduced and has prevailed to the present day. English courts and our American courts, likewise, consist of learned judges who are to interpret and apply the law, and of jurors, who are to decide upon the facts alleged in the case as a means of determining its merits.

But in ecclesiastical trials we still adhere to the Roman or Civil Process and have but one body as forming the court—Judges and their Assessors, but no jury. And hence, of necessity, the same persons are constituted judges both of the law and the facts in the case. And in criminal suits it has always been held that the jury system is the Palladium of our liberty.

§ 23. *Majorities and Quorums.*

Among the most important steps that have contributed to this end is the doctrine of *majorities* and *quorums*. The early legislative bodies, whether in Church or in State, knew nothing of them. The idea first arose in England, as a necessity, for the administration of the Common Law. In this country, majorities in all law-making bodies have a quorum determined by the Constitutional Law that creates the body. It is usually fixed at one-half the members who are entitled to seats, and a majority of a quorum can make laws that are binding upon all over whom the body itself has jurisdiction, just the same as though all the members had been present and giving their suffrages. But without a quorum,

as above determined, no act of the body has any force. In some cases, a number much smaller than one-half constitute a quorum.

But, in the ancient times and until recently, this idea was wholly unknown, and whoever might happen to come together, after due notice given, considered themselves as the body that had a right to make laws for the whole State or Church, as the case may have been.

When law—statute law—is supposed to be made by one sovereign will, as in the later Roman Empire and to some extent now in England, or by an aristocratic few, as in older Rome, the questions of majorities and quorums can hardly arise and are of small importance. But with us, in our representative legislatures, both in State and in Church, they are of fundamental importance. If “two or three” Bishops are sufficient to constitute a Province, we want to know, nevertheless, how many and what proportion of all that there is in the Province ought to be present to give to their acts the validity and force of law.

The early Councils or Synods of the Church seem to have had no idea or thought of any limitation to the authority or applicability of their Canons arising from questions like these we have been considering. And we attach importance to the so-called General Councils and the Apostolic Canons and those of the five Provincial Councils, which they recognized, only because their acts, the Creeds they set forth and the Canons they enacted, were accepted by the Whole Church, at the time or soon after—East and West, Greek, Roman and Anglican, and now American as well.

§ 24. *Importance of this Doctrine.*

This doctrine of *majorities* and a *quorum*, as I have said, is of quite recent origin and came into use in England, as it was passing from the tyranny of the Tudors, especially Elizabeth, to the liberty of modern times.

In view of this doctrine, it is not likely that any Council of the Church, as a whole, has ever been held since that described in the first chapter of the Acts, when the Eleven (Acts I., 13) are said to have been together with Mary and our Lord's "brethren." At this gathering they elected and *ordained* Matthias as an Apostle, to be, with the Eleven, "a witness of the Resurrection."

At the Council held at Jerusalem, (Acts xv.,) some fifteen years afterwards, we find mention by name of only two, possibly only one, of the original twelve,—Peter,—for it is possible, not to say probable, that the James who presided was one of the "Lord's brethren who did not believe" on Him until after they had seen Him alive again after the Resurrection.

But, at all events, we have only two or three of the College of Apostles, to which St. Paul had been added, making their number, at least, thirteen. We have, then, Sts. James, Peter and Paul, with others who are called Apostles, though of a lower grade, as Barnabas, Jude, and Silas, as well as the unnamed company of the Elders and the Brethren.

The next meeting that is commonly spoken of as a General Council, was held at Nice in Bythinia, A. D. 325. But at this gathering there were present only 318 Bishops and others of the lower order, amounting in all, as estimated, to be about two thousand. Whereas,

there were in the whole Church, at that time, including East and West, England and Africa, about two thousand Bishops entitled to seats in the Council.

After this date there were five other Councils held that are commonly named General or Universal, although the largest number of Bishops that attended any one of them was that of Chalcedon, A. D. 451, when the number reached only six hundred and thirty. This number could have been scarcely one-fourth of all the Bishops that were at that time actually engaged in the work of the Ministry.

But these Councils are called and accepted as General Councils, (1) because the summons to attend them was issued to all the Bishops, but (2) more especially, because their acts, the Canons they passed and the Creeds they set forth were *universally accepted* by all Branches of the Church.

But this doctrine of majorities and of a quorum, which, as I have said, originated in England, never found a place or was accepted in the Roman Church or in any of the Nations on the Continent of Europe which received the old Roman Civil law as the basis of their civilization. Hence, Rome and the Churches in the Roman Obedience continue to hold Councils which *they call General*, when duly summoned by the Pope, however few may be in attendance, if only they pass such Canons and set forth such Creeds as are acceptable to and accepted by "his holiness," the Pope.

§ 25. *Progress in Theories of Law.*

But, yet, as I have maintained, I think that, in view of the philosophy of law and legislation that is now universally adopted in the civilized world, whenever

any section of the Church, with the "Historic Episcopate," becomes a free and independent Province, all customs and usages that may have grown out of previous Canons and positive enactments are in force as usages, or customs, and will so remain until they are properly changed, but the Canons and enactments, out of which they grew, are no longer in force as Canons or laws resting on other grounds than mere custom and use.

And I am sure that no one who is familiar with the history of the past and general principles of the science of legislation can fail to see that the Church in this country has before it a work and a responsibility of unprecedented magnitude. The recognition of the lay element, the "Brethren," as well as the "Elders," (Acts xv., 22-23) in our Councils, Conventions and Synods, and the great fact of the total isolation and separation from all State control or influence, presents a state of things, and raises questions of great magnitude, such as have never before occurred to any Branch of the Church of Christ.

The world has seen ages of lawlessness when absolute monarchy and despotism was the only alternative to anarchy, and God seems to have used it as a means of training men to that reverence for law that has rendered liberty possible. We have had ages, too, of ignorance and barbarism since the introduction of Christianity, when superstition, having replaced well understood truths, the Popes and their assumptions of Supremacy seem to have been the only thing that saved or could have saved even the outward forms and symbols of the Christian Faith for the use of subsequent generations. And God still uses it to keep up the use of the forms,

confessions of faith and the Sacraments of life, until the people shall come to know the truth and be able to give a reason for the hope that is in them. And, in these days of liberty and rational belief, to which God in His Mercy and Wise Providence has brought us; when we have a Government without a Monarch and a Church without a Pope, and to the intent that government in State as well as in Church, and in Church as well as in State, "may be of Law and not of men," we must know what constitutes the majorities and who are quorum that may make our laws for us.

It is our theory that in State, Constitutions are made and can be changed only by the vote of the people. In the Church, however, with no King to "protect" or Pope to "control," we recognize an element of the Ministry which our Lord "gave" to continue "the work of reconciliation," which He began, until His coming again—"the Historic Episcopate." It is not easy to foresee what may yet be, in this country, where the people—the lay brethren—are recognized and allowed to have so large an influence upon whatever may come to have the force of law amongst us.

§ 26. *English Canons, How Far a Law for Us.*

I suppose that there may be some of the clergy who will agree with my conclusion far enough to admit that the English Canons and even the Rubrics of their Prayer Book are not law in the sense that they must be obeyed, in all their details, by all our clergy, or can be enforced by our Bishops; but that they have the force of law far enough to justify them in selecting from them whatever they happen to think will be pleasing or edifying, and, especially, far enough to be for them a defense

against any censure or proceeding, if one should be instituted against them for the course they have chosen to take.

But we must remember that the "godly admonitions" of the Bishop extend to all such cases, not only the cases for which no provision is made, if there are any, but also to the enforcing of anything that is contained in the Bible, as *we understand* it, the Rubrics of *our* Prayer Book and the Canons of *this* Church. English authority, though, doubtless, to be highly respected, is no authority and of no avail for the members of the clergy in such cases. The "godly admonitions" of the Bishop is the only rule that is provided for their guide in such cases.

§ 27. *This View in Accordance with Scripture.*

And I think that the view here presented is clearly in accordance with the Holy Scriptures and the Canons of the Primitive Church.

In Matt. (xviii., 18-21) our Lord gave to His Apostles authority "to bind" and "to loose" on earth. This, of course, means to legislate and make laws. Whatever they—any "two or three" of them—gathered in a Provincial Council, should "agree upon," when acting in His name, should become a law and rule of obligation upon the members of the Church. And, conversely, whatever they should "loose," the members of the Church under their jurisdiction should be released from all obligations to keep, to observe and do.

With the Apostles, this function of theirs included two elements—one can no longer be exercised: (1) the teaching of original matter which He had commanded them, and the (2) other, is to make such rules and regula-

tions *subordinate* to what is thus taught as *immediately from Him*, as may be found necessary in any nation or in any succeeding age of the Church.

As an example of this last, we see the Apostles themselves, with the Elders and Brethren, at Jerusalem, (Acts xv.,) coming together "to consider" of a very important matter which does not appear to have been provided for in the manner of the rules and principles that come under the first named head. It was no less than the question whether the converts from the Gentiles should be compelled to be circumcised and keep the ritual of the Mosaic Law.

And we find in the earliest records of the Church, that whenever two or three of them—constituting the Bishops of the Province—could meet together for that purpose, they made Canons, which were regarded as obligatory on all the members of the Church, second, only, to the most positive precepts and teaching of the Holy Scriptures themselves.

And there is no possibility of conducting the worship anywhere or by anybody without the use of some such rules, Canons and regulations. Those that are ancient and have been long used are apt to be wise and good.

And this fact gives to the consideration of our subject an importance which could by no other means be attached to it. Our Lord Jesus Christ built His Church on the Rock of Faith. He declared that the gates of Hell should not prevail against it. He gave to His Apostles and to the Ministry who were to continue the work of reconciliation until His coming again, authority, whenever "two or three" of them, of the proper

order and grade, might be met together in His Name and for that purpose, to make all laws in regard to the detail of preaching His Word and administering His Sacraments, not provided for in the Holy Scriptures, that ever, anywhere and at any time, might become necessary for the work and ministry of reconciliation which He had committed to them.

This consideration, I say, gives to the question of Church law, and what is the law of our Church, or any other legitimate Branch of His Church, a character of the gravest importance. In this view, that law becomes for us, each and all, a part of the rule of life, wherein obedience, or, at least, the spirit of obedience, with proper limits, is as essential as the Faith itself.

We, indeed, hear much said about "a Charity that is above Rubrics." Well, if it is *above* them it is well, and a superior guide for all our actions. We have our Saviour's words for it, mercy rather than Sacrifice. But it is to be feared that what is thus appealed to is not always *above*, but rather much more frequently *below* the Rubrics. What I mean is, that it is appealed to as an excuse or apology for something that is better left undone, some whim, conceit, fancy or false doctrine which the Rubrics and the whole tenor and law of the Church, both word and spirit, were intended to guard against.

In this Essay I make no effort at explaining or interpreting the laws of the Church. I aim, rather, to show what they are and where they may be found. And in general we have seen that they are in (1) the Canons of the Church, (2) the Rubrics in the Prayer Book, and (3) the godly admonitions of the Bishops.

§ 28. *Rules of Interpreting Church Law.*

And in interpreting the laws thus found, we have, as I think, to accept two quite distinct and different guides.

1. In interpreting "the Godly Admonitions" of the Bishops we have the English rule, that "the intention of the law-maker is the law;" for, as in that country, *all* law is supposed on theory to come from the King and have its only authority and sanction in his will, so, here, all the "godly admonitions" of the Bishop come from him personally and have no authority and sanction but what his determination gives them.

2. But in this country, the laws are considered as made by the people, or their agents—Senators and Representatives—and are supposed to express the people's will, and that can be ascertained, as we assume, only by the words that are used in the Statutes to express that will. Hence, here, our rule is not what the law-makers, including Representatives, Senators, and Governors, or President, as well, intended, but what does the law itself mean in the natural and rational interpretation of the language and terms used in expressing that meaning and with a special reference to the object which the law itself avows in its title or preamble as the intention which its passage was designed to accomplish.

Hence, in this country, it has been found in several cases that the law actually fails to accomplish its object or accomplishes something that the law-makers had not at all in mind when they enacted the law.

Now, I think that this rule of interpretation is the only one that we can apply in this country to the interpretation of our Rubrics and Canons.

And yet, a knowledge of the intention of the law-makers is often necessary and quite indispensable to a right comprehension of the terms they used.

§ 29. *Use of Tyranny in Advancing Law.*

The world has had its crises, and so has the Church, in which, apparently, nothing but the Hand of God, guiding affairs by his Providence and using unscrupulous men to do what needed to be done, and which, however, no conscientious, God-fearing man would do. Without the treachery of Judas and the weakness of Pontius Pilate, there could have been no crucifixion on which the salvation of man and the regeneration of the Race depends. Without the unscrupulous assumptions of the Popes and their arbitrary interference in the affairs of Churches and States, over which they have not a shadow of right of jurisdiction, it is doubtful if Christianity itself could have been perpetuated through the Dark Ages to our own times. And so, too, without the tyranny and most unjustifiable and unscrupulous interference in Church affairs by Henry VIII. and his daughter, Elizabeth, the English Church could not, so far as we can see, have been brought through the fiery trial and conflicts of the Reformation period to be, as it is now, the leading Branch of the Catholic Church, for all the purposes of the spread of the Gospel in the times to come. And so, too, finally, had it not been for the timely discovery of this continent and the peopling of it with so many and such widely different sects, there is no probability that we should have, in our day, a Government without a King, and so a Branch or Province of the Church without a Pope, and with a due recognition of the rights of all orders and classes of believers in the Church in its Synods and Councils.

Thus, England, by its physical isolation as an island, has been used by Providence to subserve purposes which are, in many respects, analogous to those which were secured by the local and political isolation of His ancient people, the Jews. They prepared the way for the coming of Christ and His Church. And it was in this island that arose the Common Law which has made government of liberty and law possible in America. It was here, in this isolated island, that God used Kings and Queens to train a people to be a Church after the Primitive pattern and with neither Papal nor Political Powers of this world to control its doings.

§ 30. *Bearing of These Things on the Subject.*

All these things have a bearing on the subject before us. We have a splendid prospect. We are, as I believe, in the van of civilization and we have, as a consequence, a tremendous responsibility resting upon us, both in Church and in State.

We see in the Irish, the Germans, and the Italians, what the systems of the old world have produced; the Civil Code and the Papacy among the Italians; the Civil Code and Protestantism in its narrower sense among the Germans, and the almost unmitigated influence of the Papacy on that portion of the Irish in our country who still adhere to the Papacy and the mediæval notions which that system aims to perpetuate. And we have in the Anglo Americans, an illustration of what the English system, both in Church and State, the common law and Church authority limited by law, based on a knowledge of the contents of Holy Scriptures, can produce.

In all Nations thus far the leading idea has been gov-

ernment ruling and controlling the subject people; with us, and for the first time in the world's history, the controlling idea has been the protection of the rights and the liberties of the citizens within and up to the widest limits consistent with order and law.

But in the Church, we have the idea of something above human law, above the authority of State or King—the authority of God, Who rules and overrules all things and from Whom both the family and the State derive whatever authority they may have to rule, each in its own appropriate sphere. His law is contained in His Word, the Holy Scriptures, to which no man may add or detract anything that is of a fundamental or essential importance.

And, besides, what is thus unchangeable, so that no man may take therefrom or add thereto, our Lord has authorized the Ministry, whenever two or three of them shall be gathered together, with the Elders and Brethren, in His name and for that purpose, to make all the rules, Canons or regulations of whatever kind may be necessary, at any time or in any place, for the preaching of the word, the due administration of the Holy Sacraments and the instruction and guiding of the people in the ways of a godly life.

§ 31. *The Special Function of the Church.*

Hence, the Church is for the inculcation and enforcement of the other great idea—the idea of authority—the authority of God and not of men—as setting bounds to liberty, prescribing the way of righteousness and salvation.

And thus the Church is necessary to the State as an indispensable means of its existence and perpetuity.

And in the Church we have a medium or midway between two extremes. On the one hand, the claims of the Papacy, with the infallibility of the Pope, subjecting all things to law, and to *his* law as well, and on the other, the large number of Protestant Denominations who make no claim to divine origin as Churches or any special divine commission or authority for what they do. We do claim Divine Authority, but an authority that is and must be exercised within the limits of what is written in the Holy Scriptures, without human additions, except in mere matters of detail, which may be necessary and good for the use of edification.

And our church has ordered these details, with no pretence of being able to cite Holy Scripture for them, and no claim to immediate divine authority for all of them, but only such authority as our Lord Himself gave to each Branch of His Church for such purposes.

And thus, while the State aims to protect liberty, the Church comes in to teach law, divine law, as a restraint upon that liberty which tends to run into licentiousness, and sets a limit to the ways that one may pursue, which, however, in the end lead to death.

And submission and obedience to the civil authorities in the State form one of the doctrines and duties that we teach as commanded of God. "The Powers that be are ordained of God," and whether it be a King as supreme, even though ruling in absolute despotism, or only a President, armed with authority and charged with the duty of enforcing the laws that have been made by the people's will, they are "ordained of God" to enforce obedience and prevent anarchy; and the world over, and in all time, they generally rule with about as much re-

gard to the liberty and the natural rights of the people as the people themselves are prepared to appreciate and to exercise with due regard to the rights of others. The chief function of civil rulers is to be "a terror to evil doers" of whatever grade.

Even in the American Republic we find it necessary to proclaim martial law, which is the most absolute and despotic of all laws, in certain emergencies. *Inter arma silent leges.*

And the extent of that liberty of thought and action which any government, that *would continue to govern*, can allow to those that live under it, depends upon the extent of their knowledge of their rights and duties, and their willingness to perform their duties and to impose upon themselves that restraint which is necessary that they may not infringe upon the rights of others.

But, in the Roman Church, the thing is quite different. They insist on obedience, indeed, and claim a divine right to do so ; but they make the Pope supreme, and if that religion prevails, and wherever it prevails, the Pope is the only supreme and controlling power. He not only claims the power to depose Kings, but, in our country, he can control, and claims the right to control, the votes of the people and through them the whole machinery of our government. And they can do it more effectually and more completely, perhaps, than if our government were an hereditary Monarchy.

§ 32. *Means of Enforcing the Laws.*

In the State, the enforcement of the law depends upon "the strong arm of force;" but in the Church it depends upon convictions and a sense of the divine authority of the Church. The most the Church can do,

by way of enforcing its laws, is to excommunicate its members. But when there are "Churches many," excommunication by one, except for the grossest immorality, is usually but a cause of an honored reception by another.

Hence, the necessity for clear and well understood views and correct convictions as to the nature and extent of the authority which, in the sight of God, the Canons and Laws of any body of Christians, claiming to be a legitimate Branch or Province of His Church may have, or to which they may be fairly entitled.

For the sake of clearness and at the risk of a little repetition, I will say:

(1) Our Lord founded His Church and appointed His Ministry, whose work, and the necessity for it, will last till the end of earthly time.

(2) Our Lord gave to His Ministry, whenever "two or three" of them should be gathered together in His Name and for that purpose, authority to make laws and rules subordinate to His commands, and in regard to matters of detail. (Matt. xviii. 18.)

(3) The Apostles exercised this authority immediately after "the great forty days," in the selection and ordination of Matthias; and again, some fifteen years after, (with only "two or three" of the original Apostles present,) in settling the question as to the continued obligation of the Mosaic law of ritual.

(4) The Apostles and early Bishops continued to exercise this authority, as occasion required, and gave us, as the result, the body of laws of their making, known as the Apostolic Canons.

(5) After the conversion of Constantine, about A.

D. 311, larger assemblies began to be held, and, finally, from A. D. 325 to A. D. 680, we have the six General or Universal Councils.

All these are proofs and illustrations of the existence and reality of the authority, such as I have been considering, possessed by those who are of that Divinely appointed Ministry, to make such Church laws as we have had in mind in this Essay.

§ 33. *Divine Influence Necessary for States.*

And, I believe, that all thoughtful men see and are agreed in thinking that some such influence as follows from these facts is essential to the preservation among us of those moral principles which concern purity of character as well as the order and subordination in the State upon which the stability of our Republican Institutions depends ; and is, in fact, the only thing that can prevent that lawlessness which necessitates, and will most inevitably, if it comes to prevail, cause a return to that despotism which alone can save us from anarchy, and what is worse, if anything worse is possible.

The Papacy, of set purpose and for good reasons, from its point of view, strives to keep the people in ignorance of these facts, does not encourage the circulation or the study of the Holy Scriptures, and has its services in a language that the people do not understand. Hence, of course, there can be no intelligent churchmanship among them ; their religion consists, to a large extent, if not wholly, in an adherence to the Papacy.

In England, notwithstanding the fact that at the time of the Reformation, the Church then took a decided stand in favor of the widest circulation of the Scrip-

tures translated into English, yet the connection of the Church with the State and the policy of its sovereigns, even to the present day, has been such as to make a very large part of the people and, to some extent, even the clergy, also, feel and realize their dependence upon the State to an extent much too great to allow of a full appreciation of the Scripture grounds on which that Church rests.

Their people think of it too much as "the Establishment" to appreciate its character and value as a Branch of "the Church of the Living God, the Pillar and Ground of the Truth."

But, in this country, the case is quite the reverse. We need to put forward the Scriptures and the Scripture grounds of our faith and our belief as against the Papists, on the one hand, and as against the various Protestant Denominations, on the other. We need to be, and must be, in order to be able to vindicate and defend our position, doubly armed; armed, that is, against rivals on both sides of us; rivals, too, who are intensely in earnest in pushing their own claims and making converts.

§ 34. *The Work Before Us.*

And I feel sure that if we cast a glance to the future and at all forecast its character, we shall see that we are at the beginning of a new era for humanity; an era in which the world will have only governments "*by* the people and *for* the people," and a Church which, while claiming to be of the divine origin that we read of in the New Testament, claims no authority but that which our Lord gave to preach His Gospel and to make from time to time such minor rules and regulations as the

wants of the people committed to its charge may require; always, of course, in subordination to what He has taught and commanded in the Holy Scriptures.

We have, indeed, as we claim, "the Historic Episcopate" continued to us from Apostolic times and from the Apostles themselves. But our Bishops are chosen by the people. They are not hereditary, like the Priests under the Jewish Dispensation. They are not appointed for us by Kings and Queens, as in England. Nor, yet, are they sent to us by a Pope, as in the countries in the Roman Obedience on the Continent of Europe and among the adherents of the Papacy in this country:

Ours is already a great country. It is about as large in territory as the Roman Empire in its palmyest days, and will, in a very few years, contain as many inhabitants as the Roman Empire did when the great General Councils were held, A. D. 325-680. We have a climate that is fully as diversified as theirs, and a population much more varied in race and character. Besides native Indians, we have several millions of imported negroes. We have, also, a large element from each of the great Nations of Europe and Asia, as well. And they bring with them, each of them, the best elements of the civilizations that had been attained in the countries they left behind them.

Our ancestors brought with them the English language and the English system of common law, which already prevails throughout our land. And the first settlers—those of Jamestown, Va., 1607—brought with them and established there a branch of the English Church, of which it has been well and strikingly said that "it is *Catholic*, as for all the truths of God, and *Protestant*, as against every error of man."

This "little one has already become a thousand" in our midst. It seems destined to gather into its Fold the great mass of our population. On the average, about thirty of the Ministers of the surrounding Denominations or sects, including the Roman Catholics, come into our Ministry each year. Statistics show that we are growing in numbers about twice as fast as the population of the country. Of those who are admitted to full communion in our Church by Confirmation, only something less than one-third, so far as I have been able to ascertain, were born and trained in the Church. Something less, also, than one-third are converts from the various forms of agnosticism and unbelief, leaving about one-half to consist of those who had belonged to some of the Denominations around us, including, in this designation, Romanists, Presbyterians, Baptists, Methodists, Unitarians, etc., etc. And these persons who thus enter our Fold, for the most part from earnest conviction, often prove to be the most zealous and efficient members that we have.

And it seems likely that in the future and at no great distance these people will all be blended into one. Law, Language and Religion are wonderfully powerful agents in transforming and moulding the character of peoples. Indians and Negroes may not unlikely, in the far off future, disappear as separate races, and all rise up to that capacity for freedom of thought in matters of Religion, and liberty of action in matters of State legislation, for training men to which, as I believe, England was isolated as an island and this country kept back in the domain of undiscovered lands, until, in the Providence of God, a people should be prepared for a new era

in the world's history,—a new type of national character, a new stage in the progress of civilization, a new epoch in that work of regeneration, which our Lord and His Apostles began,—one step more onward towards that stage in which the Lord will write His laws in the minds of men and so imprint them on their hearts that they will become a part of the instincts of our nature, and no man will need to teach his neighbor to know the Lord, for all shall know Him, from the least to the greatest of the population.

The Church which our Lord founded has had a varied experience during the period of its earthly existence. Up to the beginning of the fourth century it was under the experience of opposition and persecution. Scarcely had this period of its existence passed away, when the Bishops of Rome began to claim dominion over it as the successors of St. Peter. And from the Reformation in England it has been under "the protection" of the Monarchy in England. I trust it has now reached its Majority in this nineteenth century and in these United States, when both, from maturity of age and the accumulated wisdom of past experience, it is able, by God's help, to stand alone and to manage its own affairs in the divine way, be broad enough to include all those that love the Lord Jesus Christ better than themselves or any human leader, and narrow enough to inculcate, without hesitation or reserve, "the Faith once delivered to the Saints"—every truth necessary to human salvation—and deep enough and earnest enough to be the leader in every thing that tends to the glory of God or the welfare of man.

And thus, without King or Pope to sustain us in this

country, we, and our Church, must "stand on our own merits," so to say. And the grounds of these merits or claims are, as I think, three-fold: (1) the extent to which we can show our claim to a historic descent from that Ministry to whom our Lord gave the power "to bind and loose" on earth, and, by so doing, to provide for all the wants and details of teaching, worship and Church organization that may be necessary ever or anywhere; (2) the extent to which we can show that the doctrines we teach, the Sacraments we administer and the rites we ordain are in accordance with the teachings of the Divine Word, so far as it teaches anything on the subjects at all, and (3) the wisdom and skill which we display in the exercise of these powers and duties in adapting ourselves, our work, our rites and ceremonies, our modes of preaching and defending the sacred truths entrusted to us, to the wants of the age, the peculiarities of our people and the relation to the government under which we live, and the advanced civilization of the age in which, under the allotment of Providence, our sphere of duty has been assigned us.

§ 35. *Duty to Make Services Attractive and Edifying.*

It is, doubtless, true that we ought to make our Services and Ministrations as acceptable and attractive as we can, and do all we can to make them so, within the limits of the law under which we live. We have, at least, four persons, or classes of persons, to be considered besides the honor and glory of God. We have (1) those who are in the Church and accustomed to its ways, whom and whose tastes we must not unnecessarily offend. Then we have (2) those who are outside of us, Romanists, whom it is proper to seek to convert

from "the error of their ways" as far as we can, and (3) those who, by the errors and mistakes of their fathers, have been led into the various forms of secession from "the Historic Episcopate" and who are extremely jealous of anything that looks like a tendency to Romanism and Romanish ways and doctrine, and, finally (4,) we have the great mass of agnostics and unbelievers who have been led into the attitudes they now assume by the pursuit of scientific methods and the belief that there is and can be no knowledge of things supernatural, and that there is an irreconcilable contradiction between the truths of Revelation and the attainments of scientific discovery. They are not very susceptible to mere emotion and think but very little of a religion, or a worship, that grows out of a tendency to promote mere emotional piety. They care little or nothing for, and are not at all repelled by, usages and rites, as mere Romanish or as tending to Romanism. The objection in their minds is that they are senseless and frivolous. Men, in their view, who are profoundly in earnest and have any sort of an appreciation of the great facts and the grander truths of science, will not attach much importance to things which are, in their view, so trifling, too trifling, to be worthy of much thought or care in any direction.

They cannot easily be persuaded that our religion is a very serious matter or worth much, so long as they see those who are chiefly engaged in promoting it wasting much time and thought on what seems to them such senseless trifles.

We want somebody—a Butler—to write, not now an Analogy between Revealed Religion and the Constitu-

tion and Course of Nature, but to show them that what they have attained by their methods of scientific discovery, and as far as they have gone and attained any thing that can not be called science or certainty at all, are but the Truths of Religion, long ago taught by Revelation—though stated in other forms and in different terms, and the use of different words and expressions.

§ 36. *St. Paul's Rule the Best.*

And, doubtless, too, of all the classes that are now outside of our Communion, those who have no faith in our Lord, and make no profession of His name, are those whom for their spiritual good it is of vastly the most importance that we gain. They are, beyond question, outside of the Covenants of promise. Others have a hope, and for this we may have a hope—that whatever may be the errors, the mistakes and the defects of their systems, they may be received at last by our common Lord into some among the mansions that are in His and Our Heavenly Father's House.

Amid all these considerations, perhaps we can do no better than to do as St. Paul says that he did,—of course, always within the limits allowed by law,—become “all things to all men,” if by so doing we can gain some. Or, as he also professed as the leading rule and guide of his life, “if meat maketh any brother to offend, I will eat no flesh while the world standeth, lest I make my brother to offend.”

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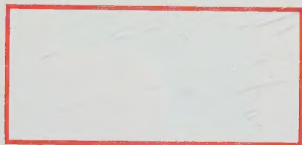
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